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EXAMINER

CARTAGENA, MELVIN A

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/686,541
Filing Date: October 15, 2003
Appellant(s): CELLINI ET AL.

MAILED

OCT 09 2007

Group 3700

Christopher L. Makay
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 13, 2007 and April 18, 2007 appealing from the Office action mailed February 12, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

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(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,716,170	Mangels	2-1973
5,941,629	Tuscher	8-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 3,716,170 to Mangels in view of US 5,941,629 to Tuscher.

Mangels shows a chemical ejecting flash light as seen in Figs. 1-5, having a body defining a canister compartment 11, a flashlight compartment 12 and a flashlight head 13 secured at one end, a switch assembly 33, batteries 25, a nozzle at the end of a nozzle tube 61, a trigger assembly 68 wherein the trigger assembly and the switch assembly can be activated without changing grip on the body, a spray canister 26, a thumb activated safety 76 coupled to the trigger assembly, see column 5, lines 37-61, a trigger aperture 71, a nozzle pathway 60, the

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the trigger assembly, see column 5, lines 37-61, a trigger aperture 71, a nozzle pathway 60, the switch is connected to a positive and negative terminals 21 and 22 respectively, the switch assembly and trigger assembly have corresponding apertures in the housing, a switch cap 69, see Figs. 1 and 4, and a nozzle 41 secured to the body. Mangels shows all claimed features as discussed above except for a fluid tight seal between the flashlight compartment and the canister compartment and the nozzle secured at a second end.

Tuscher shows a defense flashlight having housing 2 with a solid watertight adaptor 8 between the flashlight compartment and the canister compartment, see Fig. 1, and the spray nozzle 21 securable at a second end.

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Mangels to include a watertight seal between the flashlight and canister compartments and a nozzle securable at a second end as taught by Tuscher to prevent any leaks from the canister fluid to come in contact with the batteries to prevent premature failure of the batteries or even an explosion, if the content of the canister is flammable, and secure the spray nozzle at a second end of a conventional flashlight to reduce the cost of producing the safety unit.

With respect to the method claimed in claims 16-20, the device of the Mangels-Tuscher combination performs the steps of gripping the housing with a thumb positioned on over a trigger, actuating the safety to actuate the trigger or operating the switch without changing grip on the housing, see column 5, lines 37-61.

(10) Response to Argument

In response to arguments with respect to claims 1, 2, 5, 6 and 8-20:

Appellant argues that modifying the device of Mangels in view of Tuscher would render the modified device of Mangels unsatisfactory for its intended purpose and that there is no motivation to make the modification. The device of Manger teaches ejecting a spray or stream of non-lethal chemical parallel with the array of light from the flashlight, when desired. If the user of the device has no desire to illuminate the stream of non-lethal chemical or the intended target, then the dispensing nozzle could be placed in any other location constituting a second end from where the light emitting end is located, including the opposite end as taught by Tuscher. With respect to the Appellant's arguments that the nozzle of Tuscher is not secured to the second end of the body, the Mangels reference shows a nozzle secured to it's body and the reference of Tuscher is used to illustrate that the nozzle could be place at a different location with respect to the location of the flashlight if the user had no desire to illuminate a potential target of a non-lethal spray discharge.

In response to arguments with respect to claims 3 and 4:

With respect to appellant's arguments that Mangels does not disclose a safety aperture and a safety that mounts on the body, see column 4, lines 37-60, where Mangels describes the safety features of the spray actuator mounted on the devices' body. Once again, the reference of Tuscher is used to illustrate that the nozzle could be place at a different location with respect to the location of the flashlight if the user had no desire to illuminate a potential target of a non-lethal spray discharge.

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In response to arguments with respect to claim 7:

In response to the Appellant's arguments that the device of Mangels does not disclose a biasing mechanism that biases a locking member against a trigger, see column 4, lines 19-22, the valve mechanism has a biasing mechanism that biases the container against the actuating trigger and the locking mechanism.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

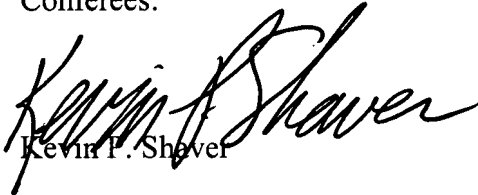
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Melvin Cartagena

Conferees:



Kevin P. Shaver



Janet C. Baxter